IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

OP.No. 38352 of 2001(S)

OA.455/1999 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
.....

PETITIONERS:

1.THE DIRECTOR GENERAL,
DEPARTMENT OF POSTS, NEW DELHI - 110 001

BY ADV. SRI.P.S.SREEDHARAN PILLAI, SCGSC
SRI.JOHN VARGHESE, SCGSC

RESPONDENTS:

1.R.JOSEPH RAHUL,JUNIOR ACCOUNTS OFFICER,
OFFICE of the DEPUTY DIRECTOR OF ACCOUNTS (POSTAL)
TRIVANDUM (THARA, T.C.NO.41/1218, KALLIL HOUSE LANE, MANACAUD P.O., TRIVANDRUM 695 009)

2.THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH, REP. BY ITS REGISTRAR.

BY ADV. SRI.M.R.RAJENDRAN NAIR FOR R1
SRI.R.SREERAJ FOR R1
SRI.HARIRAJ FOR R1
SRI.ANIL R.NAIR FOR R1

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/03/2007 ALONG WITH O.P.24656 OF 2002, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.38352/2001

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF O.A. FILED BY THE 1ST RESPONDENT DATED 29.3.99.

EXT.P2: COPY OF THE REPLY STATEMENT FILED BY PETITIONERS.

EXT.P3: COPY OF THE REJOINDER FIELD BY 1ST RESPONDENT DATED 7.9.99.

EXT.P4: COPY OF THE REPLY STATEMENT FILED BY PETITIONERS DATED 21.2.00.

EXT.P5: COPY OF THE ORDER IN O.A.455 OF 99 DATED 4.9.01.

/TRUE COPY/

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

O.P.Nos.38352 of 2001 & 24656 of 2002

Dated 23rd March, 2007

JUDGMENT

Koshy,J.

In these two cases, the common question to be decided is the application of F.R.22 in fixation of pay. Though facts are different in these two cases, since the common question is mainly regarding the interpretation of F.R.22, as requested by the parties, these cases were heard and decided together. Both these cases were filed against the orders of the Central Administrative Tribunal. O.P.No.38352 of 2001 was filed by the Postal Department challenging the order of the Central Administrative Tribunal in O.A.No.455 of 1999. O.P.No.24656 of 2002 is filed by an employee challenging the order of the Central Administrative Tribunal in O.A.No.30 of 2000 against the Postal Department. Before dealing with the facts of the cases, we may quote F.R.22 which is as follows:

> "**F.R.22.(I)** The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:-
>
> (a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or

officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or (rupees one hundred only) whichever is more.

(Save in cases of appointment on deputation to an ex adre post, or to a post on *ad hoc* basis or on direct recruitment basis), the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an *ad hoc* promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercises within one month from the date of such regular appointment:

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or (rupees one hundred), whichever is more.

(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old

post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:

Provided that where the minimum pay of the time-scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay:

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post.

On appointment on regular basis to such a new post, other than to an ex cadre post on deputation, the Government servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post.

(3) When appointment to the new post is made on his own request under sub-rule (a) of Rule 15 of the said rules, and the maximum pay in the time-scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay.

(b) If the conditions prescribed in Clause (a) are not fulfilled, he shall draw as initial pay on the minimum of the time-scale:

Provided that, both in cases covered by Clause (a) and in cases, other than the case of re-employment after resignation or removal or dismissal from the public service, covered by Clause (b), if he-

(1) has previously held substantively or officiated in

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post or a temporary post (including a post in a body, incorporated or not, which is

wholly or substantially owned or controlled by the Government) on an identical time-scale; or

(2) is appointed subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules to a tenure post on a time-scale identical with that of another tenure post which he has previously held on regular basis;

then the initial pay shall not, except in cases of reversion to parent cadre governed by proviso (1)(iii), be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the President under Rule 9(21)(a)(iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on a regular basis on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay. If, however, the pay last drawn by the Government servant in a temporary post had been inflated by the grant of premature increments, the pay which he would have drawn but for the grant of these increments shall unless otherwise ordered by the authority competent to create the new post,be taken for the purpose of this proviso to be the pay which he last drew in the temporary post which he had held on a regular basis. The service rendered in a post referred to in proviso (1) (iii) shall, on reversion to the parent cadre count towards initial fixation of pay, to the extent and subject to the conditions indicated below-

(a) the Government servant should have been approved for appointment to the particular grade or post in which the previous service is to be counted;

(b) all his seniors, except those regarded as unfit for such appointment, were serving in posts carrying the scale of pay in which benefit is to be allowed or in higher posts, whether in the Department itself or elsewhere and at least one junior was holding a post in that Department carrying the scale of pay in which the benefit is to be allowed; and

(c)the service will count from the date his junior is promoted on a regular basis and the benefit will be limited to the period the Government servant would have held the post in his parent cadre had he not been appointed to the ex cadre post.

(II) The President may specify posts outside the ordinary line of service the holder of which may, notwithstanding the provisions of this rule and subject to such conditions as the President may prescribe, be given officiating promotion in the cadre of the service which the authority competent to order promotion may decide, and may thereupon be granted the same pay whether with or without any special pay attached to such posts as they would have received if still in the ordinary line.

(III) For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith.

(IV) Notwithstanding anything contained in this rule, where a Government servant holding an ex cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment."

2. In O.P.No.38352 of 2001, the first respondent (applicant before the Tribunal) was working as a Postal Assistant in the scale of pay of Rs.1,400-2,300 having passed the Junior Accounts Officer Examination (Part-II).

He was granted officiating promotion as Junior Accounts Officer (JAO) in the Telecom Department on deputation basis from 2.8.91 to 27.6.94 in the scale of Rs.1,640-2,900. His pay was fixed granting him the benefit of F.R.22(I)(a)(1). He was reverted to the cadres of Inspector of Post Offices with effect from 27.6.94 and again he was given officiating promotion as JAO from 9.2.96 to 8.4.96. Then also his pay was fixed at Rs.1,760/- under F.R.22.(I)(a)(1) while his pay in the cadre of Inspector of Post Offices was Rs.1,650/=. He was again reverted and then promoted on 12.6.96 and his pay was again fixed under F.R.22.(I)(a)(1). Thereafter, he was given regular promotion as JAO on 24.9.96 and continued in that post and he was given the salary as fixed under F.R.22(I)(a)(1). By order dated 15.5.98 (Annexure A9) he was intimated that his pay was refixed under F.R.22(I)(a)(2) in the scale of pay of JAO of Rs.5,500-9,000 (revised pay) for the period of officiating service from 9.2.96 to 8.4.96 and at Rs.6,025/= with effect from 12.6.96 with due date of next increment at the stage of Rs.6,200/= with effect from 1.5.97. Consequent on the revision of pay scale of IPOs/IRMs to Rs.5,500-9000 with effect from 1.1.96. He challenged the retrospective re-fixation of his pay made by Annexure-A9 order. According to him, his pay is to be fixed under F.R.22(I)(a)(1) on his officiating as well as regular promotion as JAO with consequential benefits. The facts were admitted by the

respondents (petitioners in O.P.38352 of 2001), but, they seek to justify the impugned order on the ground that the pay of the post of JAO and also Inspector of Post Offices have been made equal by an order dated 6.4.98 and, therefore, the fixation under F.R.22.I(a)(1) did not arise as they could not have been deeming of higher responsibilities on applicant as JAO from Inspector of Post Offices. But, those posts were made equal only on 6.4.98. First respondent was given officiating promotion as JAO from 9.2.96 to 8.4.96 and again regular promotion with effect from 12.6.96. So, at the time of promotion the grades were not equalized. JAO was a higher post than Inspector of Post Offices and pay parity came only on 6.4.98. At the time of promotion JAO was a higher post having higher responsibilities. Hence F.R.22.(I)(a)(1) is applicable. The Tribunal held as follows:

> "It is not in dispute that at the time when the applicant was promoted on officiating basis as also on regular basis in 1996, the pay of the post of Inspector of Post Offices was Rs.1400-2300 and the scale of the post of JAO was Rs.1640-2900. So at the time when the applicant was promoted, the promotion was from a lower post to higher post and involved assumption of higher duties and responsibilities. So it was not on the basis of any deeming but on actual fact that the pay fixation was done, under FR 22I(a)(1) rightly at the relevant time. The fact that in 1998, the scale of pay of the post of Inspector of Post Offices as also that of JAO were made on par with

> effect from 1.1.96 does not mean, the level of duties and responsibilities of JAO and that of Inspector of Post Offices were always one and the same. For application of FR 22(I)(a)(1) at the time of appointment, the post on which appointment was made must be a higher post with higher duties and responsibilities. Prior to the order making the scale of pay of Inspector of Post Offices on par with the pay of JAO by 1998 order, JAO carried a higher pay scale and was therefore a higher post. Therefore, as the pay of the applicant was fixed while promotion on ad hoc basis as also on regular basis correctly and in accordance with the rules then in existence, we are of the considered view that the refixation of the pay of the applicant to his detriment is not called for."

In the above circumstances, Tribunal directed that consequential benefits should be granted to the applicant. We are of the opinion that going by the facts of the case, Tribunal was fully justified in holding that the applicant (first respondent in O.P.38352 of 2001) is entitled to the benefit of F.R.22(I)(a)(1) because before two posts were made equal by order dated 6.4.98, JAO was considered as a promotion post and in fact earlier twice he was promoted to that post on ad hoc basis and reverted. Finally, regular promotion was given from 12.6.96. Therefore, since it was a higher post at that time, he is entitled to the benefit of granting additional increment as provided under F.R.22(I)(a)(1). Considering the facts of this case and F.R.22.(I)(a)(1), we are of the opinion that no

interference is required in the order of the Tribunal in a petition under Article 227 of the Constitution of India. The order of the Tribunal is passed on the facts of the case and there is no error of jurisdiction or perversity of findings. Hence, we dismiss O.P.No.38352 of 2001 with costs. The order should be implemented within two months from the date of receipt of a copy of this judgment.

3. With regard to O.P.24656 of 2002, the petitioner therein was working as Assistant Superintendent of Post Offices, Thiruvalla. He was proceeded against under Rule 14 of the CCS(CCA) Rules 1965 and he was imposed with a penalty of reduction of pay by one stage from Rs.2,300/= to Rs.2,240/=. The appellate authority modified the penalty as withholding of next increment for the period of pendency of disciplinary proceedings. The petitioner was considered for promotion to the Higher Selection Grade-I as well as Postal Services Group B. In view of the pendency of the enquiry, he was not promoted even though he was found fit for promotion to the higher service of Postal Services Group B. The promotion to the post of Postal Services Group B was given effect to after 6.3.1996 i.e., after the expiry of the punishment period. According to the petitioner, had he been promoted to the Higher Section Grade-I initially and then promoted to the Postal Services Group B that would have been more beneficial to him. He

approached the Tribunal by filing O.A.No.50 of 1997. The Tribunal held that he is entitled to be promoted to Higher Selection Grade-I with effect from 6.3.96 and get his pay fixed accordingly and further promotion to Group `B'. The question was whether he is entitled to get the benefit of F.R.22.(I)(a)(1). He was denied the above benefit. When he was promoted to Higher Selection Grade-I with effect from 6.3.96, the pay scales of Higher Selection Grade-I and Assistant Superintendent of Post Offices had been merged to one scale i.e., Rs.6500-200-10500 with effect from 1.1.996. Therefore, on 6.3.96 there was no change in responsibilities and duties and the petitioner is not eligible for fixation benefit when he is moving from one post to another, both posts having the same pay scale with effect from 1.1.96. The applicant would be entitled to pay fixation only in accordance with Fundamental Rules. FR 22 (III) very clearly says that where two pay scales are identical there will be no assumption of higher duties and responsibilities. The Tribunal also relied on the decision of the Apex Court in **Union of India and Others** v. **Ashoke Kumar Banerjee** ((1998) 5 SCC 242) where it was held as follows:

> "..... For the applicability of FR 22(I)(a)(1), it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition

> must also be satisfied that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post..”

On the facts of the case, Tribunal was fully justified in holding that on 6.3.1996 since the pay was the same, there is no question of fixation of pay under F.R.22(I)(a)(1) when he was promoted to Higher Selection Grade-I. This decision is also based on facts of the case and we are of the view that there is no perverse finding or patent error of law in the order of the Tribunal warranting interference under Article 227 of the Constitution of India. Hence, O.P.No.24656 of 2002 is also dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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